

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

0912139 B.C. LTD., et al.,

Plaintiffs,

v.

RAMPION USA INC., et al.,

Defendants.

CASE NO. 2:18-cv-1464-JLR

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: sales information and other financial data; private account

1 information of third parties; confidential research/development or marketing materials for future
2 products; confidential business communications and agreements with third parties; proprietary
3 communications and reference materials regarding product development and design; and
4 information or materials that identify potential or current resellers or vendors of a party.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as
7 defined above), but also (1) any information copied or extracted from confidential material; (2)
8 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
9 conversations, or presentations by parties or their counsel that might reveal confidential material.

10 However, the protections conferred by this agreement do not cover information that is in
11 the public domain or becomes part of the public domain through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
14 or produced by another party or by a non-party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
16 the categories of persons and under the conditions described in this agreement. Confidential
17 material must be stored and maintained by a receiving party at a location and in a secure manner
18 that ensures that access is limited to the persons authorized under this agreement.

19 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
20 ordered by the court or permitted in writing by the designating party, a receiving party may
21 disclose any confidential material only to:

22 (a) the receiving party's counsel of record in this action, as well as employees
23 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

24 (b) the officers, directors, and employees (including in-house counsel) of the
25 receiving party to whom disclosure is reasonably necessary for this litigation, and J. Rocky
26 Harris of Harris Williams Design, who was involved in the design of defendants' accused

1 products, after he has completed and executed the "Acknowledgment and Agreement to Be
2 Bound" (Exhibit A) attached hereto, unless the parties agree that a particular document or
3 material produced is for Attorney's Eyes Only and is so designated;

4 (c) experts and consultants to whom disclosure is reasonably necessary for
5 this litigation, provided that: (1) such experts or consultants are not presently employed by or
6 serving as an independent contractor, vendor, or consultant for the parties hereto for purposes
7 other than this action; (2) before access is given, the consultant or expert has signed, completed,
8 and agreed to the "Acknowledgment and Agreement to Be Bound" (Exhibit A) attached hereto
9 and the same is served upon the producing party with a current curriculum vitae of the consultant
10 or expert. If the producing party does not object within five business days, the party may give
11 access to the disclosed consultant or expert. If the producing party timely objects to disclosure
12 of confidential material to the consultant or expert, the parties shall promptly confer and use
13 good faith to resolve any such objection. If the parties are unable to resolve any objection, the
14 objecting party may file a motion with the court within ten (10) days of its objection, or within
15 such other time as the parties may agree, seeking a protective order with respect to the proposed
16 disclosure. The objecting party shall have the burden of proving the need for a protective order.
17 No disclosure shall occur until all such objections are resolved by agreement or court order.
18 Notwithstanding the above, no discovery shall be had of any expert or consultant disclosed under
19 the provisions of this paragraph unless and until such person is designated as a testifying expert
20 witness under Fed. R. Civ. P. 26(a)(2);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) independent litigation support services, including persons working for or
23 as court reporters, graphics or design services, services which assist counsel in jury selection,
24 trial consulting services, and photocopy, document imaging, and database services retained by
25 counsel and reasonably necessary to assist counsel with the litigation of this action, provided that
26 counsel for the party retaining the support service instructs the service not to disclose any

1 confidential material to third parties and to immediately return all originals and copies of any
2 confidential material;

3 (f) during their depositions, a witness in the action, if (1) the witness is a
4 current employee, officer, director, or Fed. R. Civ. P. 30(b)(6) designee of the producing party or
5 (2) the document shows on its face that the witness is the author, addressee, or copy recipient of
6 the document, or if other evidence establishes that she has previously reviewed it. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
8 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this agreement;

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information.

12 (h) For confidential material designated "CONFIDENTIAL – ATTORNEYS'
13 EYES ONLY," access to, and disclosure of, such material shall be limited to individuals listed in
14 paragraphs 4.2(a) and (c-g).

15 4.3 Filing Confidential Material. Before filing confidential material or discussing or
16 referencing such material in court filings, the filing party shall confer with the designating party,
17 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
18 remove the confidential designation, whether the document can be redacted, or whether a motion
19 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
20 designating party must identify the basis for sealing the specific confidential information at issue,
21 and the filing party shall include this basis in its motion to seal, along with any objection to
22 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
23 followed and the standards that will be applied when a party seeks permission from the court to
24 file material under seal. A party who seeks to maintain the confidentiality of its information
25 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
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1 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
2 in accordance with the strong presumption of public access to the Court's files.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
5 or non-party that designates information or items for protection under this agreement must take
6 care to limit any such designation to specific material that qualifies under the appropriate
7 standards. The designating party must designate for protection only those parts of materials,
8 documents, items, or oral or written communications that qualify, so that other portions of the
9 materials, documents, items, or communications for which protection is not warranted are not
10 swept unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
13 unnecessarily encumber or delay the case development process or to impose unnecessary
14 expenses and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated
16 for protection do not qualify for protection, the designating party must promptly notify all other
17 parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 agreement (see, *e.g.*, section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or
20 discovery material that qualifies for protection under this agreement must be clearly so
21 designated before or when the material is disclosed or produced.

22 (a) Information in documentary form: (*e.g.*, paper or electronic documents
23 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), the designating party must affix the word "CONFIDENTIAL" or the term
25 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains confidential or
26 attorneys' eyes only material, respectively. If only a portion or portions of the material on a page

1 qualifies for protection, the producing party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties
4 and any participating non-parties must identify on the record, during the deposition or other
5 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
6 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
7 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
8 transcript, or exhibits thereto, as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS'
9 EYES ONLY." If a party or non-party desires to protect confidential information at trial, the
10 issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent place
12 on the exterior of the container or containers in which the information or item is stored the word
13 "CONFIDENTIAL" or the term "CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a
14 portion or portions of the information or item warrant protection, the producing party, to the
15 extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the designating party's
18 right to secure protection under this agreement for such material. Upon timely correction of a
19 designation, the receiving party must make reasonable efforts to ensure that the material is
20 treated in accordance with the provisions of this agreement.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
25 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
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1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding
5 confidential designations or for a protective order must include a certification, in the motion or in
6 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
7 conference with other affected parties in an effort to resolve the dispute without court action. The
8 certification must list the date, manner, and participants to the conference. A good faith effort to
9 confer requires a face-to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the designating party may file and serve a motion to retain confidentiality under
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
13 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
14 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
15 other parties) may expose the challenging party to sanctions. All parties shall continue to
16 maintain the material in question as confidential until the court rules on the challenge.

17 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION

19 If a party is served with a subpoena or a court order issued in other litigation that compels
20 disclosure of any information or items that another party has designated in this action as
21 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that party must:

22 (a) promptly notify the designating party in writing and include a copy of the
23 subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or order is
26 subject to this agreement. Such notification shall include a copy of this agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the designating party whose confidential material may be affected.

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
5 material to any person or in any circumstance not authorized under this agreement, the receiving
6 party must immediately (a) notify in writing the designating party of the unauthorized
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
8 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
9 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
10 Agreement to Be Bound" that is attached hereto as Exhibit A.

11 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

13 When a producing party gives notice to receiving parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery
17 order or agreement that provides for production without prior privilege review. The parties
18 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

19 10. NON TERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals, each receiving
21 party must return all confidential material to the producing party, including all copies, extracts
22 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
23 destruction.

24 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
25 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a
4 designating party agrees otherwise in writing or a court orders otherwise.

5 11. THIRD PARTIES

6 To the extent that any discovery is taken of persons who are not parties to this action
7 (“Third Parties”), and in the event that such Third Parties contend that the discovery sought
8 involves trade secrets, confidential business information, or other proprietary information, such
9 Third Parties may produce confidential materials pursuant to this Order. The Third Parties shall
10 have ten (10) days after production of such documents, information, or other materials to make a
11 designation under this Order. Until that time period lapses or until such a designation has been
12 made, whichever occurs sooner, all documents, information, or other material so produced or
13 given shall be treated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in accordance with
14 this Order.

15 12. DEPOSITIONS AND SUBPOENAS

16 12.1 Location of Party Depositions. Unless otherwise mutually agreed by counsel, the
17 depositions of plaintiffs’ employees will be taken in the offices of defendants’ counsel in Seattle
18 and the depositions of defendants’ employees will be taken in the offices of plaintiffs’ counsel in
19 Portland.

20 12.2 Subpoenas of Harris and Harris Williams Design. Pursuant to the parties’
21 agreement, J. Rocky Harris and Harris Williams Design will accept service through defendants’
22 counsel of subpoenas issued out of this case pursuant to Fed. R. Civ. P. 45 and will produce
23 documents and submit to depositions in the United States for this case. Defendants’ counsel
24 represent Mr. Harris and Harris Williams Design for the limited purposes of the depositions and
25 subpoenas. Mr. Harris and Harris Williams Design will be free to object to the breadth of the
26 subpoenas or on other substantive grounds, like privilege, but they waive any challenge to

1 service of the subpoenas or the jurisdiction of U.S. District Court for the Western District of
2 Washington over them with respect to the referenced subpoenas and the protection of
3 confidential, proprietary, and private information governed by this order and the
4 Acknowledgment and Agreement to Be Bound (Exhibit A).

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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 STOEL RIVES LLP

DORSEY & WHITNEY LLP

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10 /s/ Brian C. Park

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Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the inadvertent or
3 mistaken production of any written documents or oral communications in this proceeding shall
4 not, for the purposes of this proceeding or any other proceeding in any other court, constitute a
5 waiver by the producing party of any privilege applicable to such documents or communications,
6 including the attorney-client privilege, attorney work-product protection, or any other privilege
7 or protection recognized by law.

8 IT IS SO ORDERED.

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10 DATED: 28 Feb. 2019

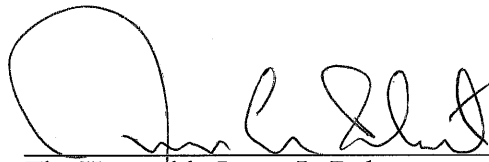
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12 
13 The Honorable James L. Robart
14 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *0912139 B.C. Ltd., et al., v. Rampion USA Inc., et al.*, Case No. 2:18-cv-1464-JLR. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____